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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Net Edge Systems, Inc.**

Serial No. 74/447,060

Michael J. Bevilacqua of Hale and Dorr for applicant.

Edward Nelson, Trademark Examining Attorney, Law Office 107
(**Janice O'Lear**, Acting Managing Attorney).

Before Hohein, Hairston and Walters, Administrative Trademark
Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Net Edge Systems, Inc., by assignment from FiberCom,
Inc., is the owner of an application to register the term "ATM
CONNECT" as a trademark for an "internetworking router."¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis

¹ Ser. No. 74/447,060, filed on October 14, 1993, which alleges a bona
fide intention to use the term.

that, when used in connection with applicant's goods, the term "ATM CONNECT" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

The sole legally pertinent argument urged by applicant is that the term "ATM CONNECT" is not merely descriptive of an internetworking router because the term does not immediately provide any direct information about the nature or quality of such a product.² Specifically, applicant contends that:

Routers are computers which determine the path of network traffic flow. Such computers

² Besides raising the meritless assertion that, because "the acronym 'ATM' has a far more widely recognized meaning, i.e. automatic teller machine . . . , it would not be possible for potential purchasers confronting Appellant's mark to immediately perceive anything about the nature of the goods identified by that mark," applicant also asserts that it is entitled to registration of its mark inasmuch as the Patent and Trademark Office has previously registered what applicant characterizes as a large number of similar marks for similar goods. Applicant, in particular, has attached to its brief copies of third-party registrations for such marks and goods as "ATMPORT" for "a network analyzer capable of testing asynchronous transfer mode (ATM) networks and equipment"; "ATMOSPHERE" for a "multimedia backbone for an enterprise network of computers and communications equipment, namely, a cabinet and back plane, input/output modules and power supplies therein"; "ATMIZER" for, inter alia, "switches and other interface units for connecting local area networks with asynchronous transfer mode networks"; "ATMMAN" for "computer software for managing data communications networks"; and "ATM EXPRESS" (with a disclaimer of "ATM") for "communications hardware and software for use in management of computer networks". Although such evidence, not previously having been made of record, is untimely under Trademark Rule 2.142(d), the Examining Attorney in his brief has not objected thereto and has, instead, treated it on the merits. However, as correctly pointed out by the Examining Attorney, not only are third-party registrations not conclusive on the question of mere descriptiveness, but a mark which is merely descriptive is not registrable simply because other arguably similar marks appear on the register. See, e.g., In re Scholastic Testing Service, Inc., 196 USPQ 517, 519 (TTAB 1977). Moreover, while uniform treatment under the Trademark Act is of course desirable, each case must be decided on its own facts. See, e.g., In re Pennzoil Products Co., 20 USPQ2d 1753, 1758 (TTAB 1991) and cases cited therein. Here, we obviously are not privy to the file records of the third-party registrations furnished by applicant and thus have no way of knowing whether any of them involved an initial refusal on the basis of mere descriptiveness or instead issued pursuant to the provisions of Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f). We therefore will not speculate, as applicant insists, that "[t]he fact that all of these marks have been registered . . . clearly indicates that the Patent and Trademark Office does not consider the inclusion in a mark of the term 'ATM' to be, in and of itself, sufficient to support a finding that such a mark is merely descriptive, even when it is used in connection with networking products."

may recognize communications protocols such as ATM, but are not synonymous with them. It is incorrect to conclude, as the Trademark Attorney has done, that a term which describes a communications protocol also describes a component which is merely capable of recognizing that protocol, particularly in view of the fact that no evidence has been provided to show that the term "ATM" is ever used in reference to routers per se. The term "ATM" may suggest that the product to which it is applied has some connection, however, tangential, with the protocol it defines, but it does not describe the product.

The Examining Attorney, on the other hand, maintains that even if the term "ATM may not be synonymous with communications protocols," it nevertheless is the case that, as shown by the record:

ATM is a recognized acronym for "asynchronous transfer mode" and identifies the way in which data communications are measured and managed on a computer network. A router serves to CONNECT a communications network and transmit and forward messages. The ATM feature allows the user of the goods to "CONNECT" or join the computer network together.

In view thereof, the Examining Attorney contends that, as applied to an internetworking router, the term "ATM CONNECT serves [merely] to describe the very character and attributes of the goods" since "ATM is a method used to connect and transmit data between a computer and modem and CONNECT [signifies linking to] the computer network by means of a router."

The Examining Attorney, in support of his position, relies upon the dictionary definitions which he made of record of the following terms:

(i) "**ATM**," which The Computer Glossary (6th ed.) at 27 defines in relevant part as "(Asynchronous Transfer Mode) High-speed packet switching technique suitable for MANs and broadband ISDN transmission";

(ii) "**asynchronous transmission**," which the same dictionary at 26 lists as meaning the "[t]ransmission of data in which each character is a self-contained unit with its own start and stop bits. Intervals between characters may be uneven. It is the common method of transmission between a computer and a modem, although the modem may switch to synchronous transmission to communicate with the other modem. Also called start/stop transmission" and which the Microsoft Press Computer Dictionary at 29 defines as "[a] form of data transmission in which information is sent one character at a time, with variable time intervals between characters; generally used in communicating via modem. Because asynchronous transmission does not rely on a shared timer that would enable the sending and receiving units to separate characters by specific time periods, each transmitted character consists of a number of data bits (the character itself) preceded by a 'begin character' signal, called the start bit, and ending in an optional parity bit followed by 1, 1.5, or 2 'end character' signals, called stop bits"; and

(iii) "**router**," which is listed in the latter reference work as signifying "[a]n intermediary device on a communications network that expedites message delivery. On a single network linking many computers through a mesh of possible connections, a router receives transmitted messages and forwards them to their correct destinations over the most efficient available route. On an interconnected set of local area networks (LANs) using the same communications protocols, a router serves the somewhat different function of acting as a link between LANs, enabling messages to be sent from one to another."

In addition, as a further aid to understanding the issue raised by the terminology and product involved in this

appeal, we have taken judicial notice of dictionary definitions of the following terms:³

(i) "**ATM**," which The Computer Glossary (7th ed. 1995) at 21 lists in pertinent part as connoting "(Asynchronous Transfer Mode) A high-speed cell-switching network technology for LANs and WANs that handles data and realtime voice and video. It combines the high efficiency of packet switching used in data networks, with the guaranteed bandwidth of circuit switching used in voice networks"; which Newton's Telecom Dictionary (12th ed. 1997) at 60 defines in relevant portion as meaning "Asynchronous Transfer Mode. Very high speed transmission technology. ATM is a high bandwidth, low-delay, connection-oriented, packet-like switching and multiplexing technique Usable capacity is segmented into 53-byte fixed-sized cells, consisting of header and information fields, allocated to services on demand. The term 'asynchronous' applies, as each cell is presented to the network on a 'start-stop' basis--in other words, asynchronously (Note that ATM is a connection-oriented network service.)"; and which Webster's New World Dictionary of Computer Terms (6th ed. 1997) at 39 similarly sets forth in pertinent part as being an "[a]lcronym for Asynchronous Transfer Mode. A network architecture that divides messages into fixed-size units (called *cells*) of small size (53 bytes) and establishes a switched connection between the originating and receiving stations. The advantage of breaking all transmissions into small-sized cells is that the network can transmit voice, audio, and computer data over a single line without any single type of data dominating the transmission. ATM's *connection-oriented* design differs from the Internet's *connectionless* design; unlike the Internet, ATM enables service providers to

³ It is settled that the Board may properly take judicial notice of dictionary definitions, including definitions in technical reference works. See, e.g., *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419, 423 (CCPA 1962); *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

bill by network usage, and is capable of very high transmission speeds";

(ii) "**internetwork**," which The Computer Glossary (7th ed. 1995) at 202 defines as meaning "[t]o go between one network and another";

(iii) "**internetworking**," which Newton's Telecom Dictionary (12th ed. 1997) at 344 lists as connoting "[c]ommunication between two networks or two types of networks or end equipment";

(iv) "**internetworking router**," which the same reference work at 344 sets forth as meaning, "[i]n local area networking technology, ... a device used for communications between networks. Messages for the connected network are addressed to the internetwork router, which chooses the best path to the selected destination via dynamic routing. Also known as a network router or simply as a router"; and

(v) "**router**," which The Random House Personal Computer Dictionary (1996) at 429 lists as meaning "[a] device that connects two LANs of the same type. Routers are similar to bridges, but provide additional functionality, such as the ability to filter messages and forward them to different places based on various criteria"; which The Internet Dictionary (1995) at 172 defines as connoting "[a] device that physically connects two networks or a network to the Internet, converting addresses and sending on only the messages that need to pass to the other network"; and which The Computer Glossary (7th ed. 1995) at 202 sets forth as signifying "[a] computer system in a network that stores and forwards data packets between LANs and WANs. Routers see the network as network addresses and all the possible paths between them. They read the network address in a transmitted message and can make a decision on how to send it based on the most expedient route (traffic load, line costs, speed, bad lines, etc.)."

Upon consideration of the above evidence and arguments, it is our view that, when applied to an internetworking router,

the term "ATM CONNECT" immediately describes, without conjecture or speculation, a significant purpose or function of applicant's product, namely that it utilizes ATM or asynchronous transfer mode switching technology to connect computer networks. It is simply not necessary that a term describe every characteristic, feature, purpose, function, ingredient, quality or other aspect of a product in order for it to be merely descriptive. It is sufficient, instead, if the term, as here, describes one significant attribute of the product, such as its function or purpose. See, e.g., In re Venture Lending Associates, 226 USPQ 285, 286 (TTAB 1985); In re Aid Laboratories, Inc., 223 USPQ 357, 358-59 (TTAB 1984); In re H.U.D.D.L.E., 216 USPQ 358, 359 (TTAB 1982); and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Plainly, to the computer network engineers, data communications managers and other technologically sophisticated individuals who would be responsible for designing and/or maintaining data communications systems such as ATM networks and who would be the principal purchasers and/or users of applicant's internetworking routers, there is nothing in the term "ATM CONNECT" which is ambiguous, incongruous, indefinite or too abstract, nor would any imagination, cogitation, mental processing or gathering of further information be necessary in order for those persons to perceive precisely the merely descriptive significance of such term as it relates to a significant purpose or function provided by applicant's product. Such term directly and unequivocally describes, in short, what applicant's internetworking router principally does, which is to

connect or link computer networks through ATM switching technology. Clearly, when joined together, the individual terms comprising the term "ATM CONNECT" have a meaning identical to that which ordinary usage would ascribe to those terms in combination. See In re Gould Paper Corp., 824 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987).

Accordingly, because the term "ATM CONNECT" conveys forthwith a significant purpose or function of applicant's product, namely, that it connects computer networks using ATM switching technology, such term is merely descriptive of an internetworking router within the meaning of the statute. See, e.g., In re Intelligent Instrumentation Inc., 40 USPQ2d 1792, 1794 (TTAB 1996) [term "VISUAL DESIGNER" is merely descriptive of computer programs for controlling acquisition of data from measurement devices for purposes of analysis, display, testing and automatic control since it immediately describes significant purpose or function of those programs, which permit new or custom programming applications to be visually designed].

Decision: The refusal under Section 2(e)(1) is affirmed.

G. D. Hohein

P. T. Hairston

C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board